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Chief Executive Officer

wil.pineau@caymanchamber.ky

2nd floor Macdonald Square,
George Town

PO Box 1000 GT
Grand Cayman,
Cayman Islands

Phone: 345-949-8090

Fax: 345-949-0220

Speech by President-Elect Mrs. Sophia Ann Harris to the Cayman Chapter of the Institute of Chartered Secretaries and Administrators (ICSA) on 30th July 2003

Many thanks for inviting me to speak on behalf of the Chamber of Commerce on what seems to be the timely subject of self determination for the Cayman Islands. If there is any doubt about the importance of the Chamber's decision to take a leading role in bringing this pertinent and relevant information on self determination to the attention of these Islands, we need only to look to our recent experiences this year and how they stand to negatively impact our financial industry. I would like to share with you some of those experiences that have been in the press recently and then explain the Chamber's position on the constitutional review process:-

Of most recent, I would like to direct you to last Friday's Compass (25/7/03) headline which read "House says No to Governor's Order". The article reports on the amendment by the Government to the proposed Terrorism Bill, transferring the vesting power to tap phones from the Governor as was required by the FCO proposed Bill, to a judge of the Cayman Islands. The Leader of Government indicated that under these circumstances it was important to have an "impartial tribunal" – a judge or court to examine the circumstances under which the citizen's rights are being removed by the State. It was noted that in the United Kingdom, for example, this power is vested in the Court. So, what an interesting and curious concept to introduce within these Islands the vesting of power in the Governor with the ability to wire tap phones, thereby circumventing our judicial system. Of course it is impossible to ignore the backdrop of the all too recent EuroBank trial and the active role of past Governors in what was described as the "London Plan", whilst weighing the importance of such an amendment to the Terrorism Bill.



Just prior to this latest stand off with the UK Government, many of you will be aware of our recent debate as to whether to extend the time frame under the Money Laundering Regulations, 2000 to allow financial institutions to be compliant on KYC requirements. Shortly after agreeing to extend the time period, amidst concerns about how the onshore world will choose to perceive this extension, on the 22nd July the UK Financial Services Authority issued the following statement, after commissioning an independent cost benefit analysis from PWC:

“We considered whether to introduce new industry-wide rules on the identification of existing customers. We needed to be satisfied that any new general regulatory obligation would be proportionate to the benefits and would not be detrimental to the industry’s competitiveness, nor unduly inconvenience customers. This was a difficult decision but given the findings, across the whole of the regulated sector of the cost-benefit analysis, we could not be satisfied that a mandatory approach would be justified.”

Needless to say the financial industry of the Cayman Islands has been most dismayed at this press release especially in view of the fact that, as a result of undue pressure from international organisations which include the UK, the Cayman Islands made a decision to be leaders in respect of Anti-Money Laundering, introducing extensive legislation, notwithstanding our general concerns that there would be significant expense for the industry in order to give effect to the legislation and most of all, there continues to be no level playing field with other competing financial centres which includes the UK and the United States. Of equal concern, there has been some doubt as to whether there is criminal liability under Cayman Law for non-compliance for the financial institution whose client does not conform to the very legislation that the UK’s FSA has determined not to impose on its financial industry.

Another case in point: after lengthy negotiations since 2000 in respect of the OECD, the FATF, FSF and the KPMG report, all of which have culminated in the Cayman Islands being more regulated, indeed some may say over regulated, in relation to its competing onshore jurisdictions (which of course includes the UK) the UK Government then indicated that we were required to implement the EU Tax Saving Directive of the European



Community into local legislation. Much concern was expressed as the proposed legislation, it was felt, would severely impact the financial industry of the Cayman Islands, in particular the Banking and Mutual Fund industries. There was also some concern that the initiative to extend the same to the Overseas Territories was designed to save the London Bond Market, to our detriment. The UK Government advised us that if we failed to implement the legislation affecting the directive, the UK Government by way of an Order in Council (also referred to as their Nuclear Option) would pass the legislation for us. The Government in an effort to safeguard the interest of these Islands took the UK Government to the EU Court amongst other things that the Cayman Islands had the right to request a Partnership Working Party to discuss the implications for the Cayman Islands of the eventual adoption of the directive into local law. The Court, in first Instance, although ruling that it had no jurisdiction to hear the matter, in general agreed that....“the convening of such a forum by the [Commission] which is chargedwith chairing inter alia Partnership Working Parties and providing their secretariat is mandatory”. It was also noted that the UK’s ability to impose fiscal measures against the Cayman Islands would depend on our own Constitution, and the UK had previously admitted that they had no such ability to impose fiscal measures.

It would be impossible to not of course cite as a further case in point the now infamous Euro Bank trial that unraveled earlier this year in the midst of the Cayman Islands grappling with the UK on the Issue of the EU tax Savings Directive. Without getting into the intricacies of the trial itself, it is important to note that in the judgment handed down by our Chief Justice, the prosecution headed by our Attorney General (which is an appointment by the UK by virtue of our Constitution), was forced to disclose that the UK Government through MI6 had planted moles throughout the Banking industry (and by separate accounts, had also wire tapped telephone lines), by consent of the Governor. It also came to be known that the head of the Financial Reporting Unit (FRU) employed by our Government was on the payroll of MI6. It is worthy to note that the FRU, which was a part of the Cayman Islands Police Service, was restructured by the Attorney General to fall directly under the auspices of the Attorney General’s office. Upon becoming tipped off that a search warrant was to be issued against the head of the FRU, MI6 instructed him to destroy all evidence that would have implicated the UK Government’s involvement. Some brief mention was also made on discovery of the evidence held by the prosecution, of “the London Plan” for the



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Of utmost concern, as a result of the findings in the Euro Bank trial, the Cayman Government refused to sit in the Legislative Assembly with the (then) AG, who is included as part of the Executive Council under our Constitution. The UK Government has indicated in its Parliament that the Attorney General was without fault in this matter. Recently a committee headed by the Governor submitted draft legislation to the Government which we were told was intended to address the concerns of the industry pertaining to those circumstances that lead to the collapse of the Euro Bank trial. However in a letter to the Government the Chamber of Commerce on behalf of the financial industry expressed its concern that the effect of such legislation would in effect create a “super Brian Gibbs” (not of course said in such few words).

The examples and cases I have just described explain some of the issues that would have a direct negative impact on you in the financial industry and, therefore, on these Islands and make the efforts of the Chamber in the constitutional reform process essential.

Turning now to the progress made in the constitutional reform process - the visit to the Cayman Islands by United Nations Ambassador Huntley, the Chairman of the Special Committee on De-colonisation by initiation of the Chamber, has been most enlightening on the rights and options open to the Cayman Islands. The UK Government has consented to the inalienable right of colonies to self-determination, which should, if fully implemented, allow Caymanians to determine, for example, the best Constitution for the Cayman Islands notwithstanding that our colonial status. The possibility therefore of Caymanians determining to establish a Constitution that limits the ability of the UK Government to impose an Order in Parliament through the Governor contrary to the will of the people of the Islands, is in keeping with the UK’s own declaration to the UN which creates a more modern, 21st Century approach to colonialism.

On the 9th July 2003 the *Caymanian Compass* carried an Article titled “FCO confirms UN Options”. In the article it was mentioned that the UN De-colonisation Committee suggested to Cayman that it had four options for



constitutional change, which is not quite accurate. As I understand it the UN Committee recognizes three options which was confirmed by the FCO:

A Non-Self Governing Territory can be said to have reached a full measure of self-government by:

1. Emergence as a sovereign independent State
2. Free association with an independent State or
3. Integration with an independent State.

To my knowledge it is the UK that first mentioned the fourth option, which as I understand it is: Negotiation by mutual agreement with an Administering Power – which may prove difficult considering there is no equal bargaining power and the UK has made it clear that a Bermuda-type constitution is not available to us.

What is clear, however, is that none of the above options were ever disclosed to us at the time that the UK instigated the constitutional reform process in 2001.

Since the UK had acknowledged the options available to the Cayman Islands, the Government in a press release indicated its intention to establish a Constitutional Committee to examine the options available to us in the constitutional process. The Government extended an invitation to the Chamber to Chair the Committee. In keeping with the Chamber's statements to the UN both in Anguilla and in New York, we confirmed our acceptance of the post and our willingness and commitment to assist in the education process – a responsibility that in fact rests with the UK and is included in their declaration to the UN.

In New York we indicated to the UN Committee that the Chamber does not support or advocate independence however we too support Self-Determination. It is somewhat unfortunate however that we have in a few instances we have been met with skepticism due in large part to the title of the committee- the Special Committee of 24 on Decolonisation. As you will note the objective of the committee is not independence of colonies but Self-Determination of colonies and in fact there have been colonies that have been removed from the UN's list of



targeted colonies as the UN have been satisfied that such colonies have achieved self-determination. In fact it may be of interest to you to hear that the UK has in fact taken steps to have the Cayman Islands de-listed, as it is their view that we have achieved Self - Determination.

I am delighted, however, that in New York the UN Committee indicated that they are currently contemplating a change of name for their committee.

Conclusion

Although Caymanians remain patriotic to Her Majesty the Queen and a membership survey confirms our wish to remain a British Colony, it seems we have had an awakening as to the unusual relationship of Mother Country vs Competitor (which is what we are as a result of our remarkable success as a financial center).

Whilst it remains important that we are vigilant in anti-money laundering and anti- terrorism, we must keep our wits about us and ensure that we have done and continue to do what is best for Cayman to maintain its cutting edge whilst being well regulated but not unduly so, which has rightly earned Cayman one of the top seats in the financial world. However in order to retain its position, it has become increasingly clear that we must have the ability to have our say and to preserve ourselves against our competitors, notwithstanding the fact that we are and choose to remain a British Colony.

SPEECH – CAYMAN INSTITUTE OF CHARTERED SECRETARIES

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Your Partner in Business and Community Success!

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